IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6771 OF 2004.

Rahul Prabhakar Joshi. .... Petitioner.

versu.

Basavraj Ramappa Nidoni & ors. .... Respondents.

Shri T.S.Ingale for the Petitioner.

None appears for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 9th December, 2004.

P.C.:

1. Notice was issued by this Court on 27th August 2004. Affidavit of service has been filed by the Clerk of the Advocate for the Petitioner annexing thereto postal acknowledgements of the notice served on the Respondents, and in particular the Respondent No.2 who is the National Insurance Co.Ltd. Today Shri Ingale, the learned Counsel appearing for the Petitioner has placed on record receipts issued by the Postal department when notices were dispatched on 3rd September 2004. He has placed on record an office copy of the notice sent to the Respondents. He states that due to typographical error the date of dispatch of notice is mentioned as 2nd August 2004 instead of 2nd September 2004. The office noting shows that the Respondents Nos.1 to 3 are served with the notice.

2. The impugned order has been passed on the Application made by the Respondent No.2-National Insurance Company Ltd. Though the Respondent No.2-company is duly served with the notice sent by the Advocate for the Petitioner, the said Company has not chosen to appear before this Court. The notice issued by the learned Counsel for the Petitioner specifically mentions that the same was issued as per the order of this Court dated 27th August 2004. The Respondent No.2 being a Public Sector undertaking ought to have appeared before the Court after service of notice. However, I find that none appears for any of the Respondents.

3. The Petitioner is the Claimant in a Claim Petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act of 1988"). His case is that he suffered an injury in a motor accident. He also filed an application under section 140 of the said Act of 1988 claiming compensation on account of what is popularly known as "no fault liability". The Respondent No.2-Insurance Company filed an application contending that the driver of the truck which is insured with the Respondent No.2-company has not committed any wrongful act and therefore, the Petitioner was not entitled to any relief against Respondent No.2 and therefore, prayed that the Application under section 140 at Exh.5 may be heard along with the main application under section 166 of the said Act of 1988. By the

impugned order dated 5th July 2004, the said application has been allowed. The result of the said order is that the Application under section 140 of the said Act of 1988 will remain stayed and it will be heard only along with the main application under section 166 of the said Act of 1988.

4. It will be necessary to refer to section 140 of the said Act of 1988 which reads thus:

> "140. Liability to pay compensation in certain cases on the principle of no fault.-
>
> (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to any compensation in respect of such death or disablement in accordance with the provisions of this section.
>
> (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.
>
> (3) In any claim for compensation under

sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force;

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

Section 144 of the said Act of 1988 gives an overriding

effect to the provisions of Chapter X. Section 144 reads thus:

> "144. Overriding effect. - The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

Section 140 provides for a speedy remedy to the victim of an accident who has suffered a permanent disablement. The said provision also provides a speedy remedy to the legal representatives of a person deceased in a motor accident. Sub-section (3) of section 140 contemplates that in an application under section 140 (1), the Claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

5. By the impugned order, the learned Member of the Tribunal has stayed the application under section 140(1). In my view the very object of providing a speedy remedy under section 140(1) of the said Act of 1988 is defeated by the impugned order. It was never intended by the Legislature that hearing of the claim

petition under section 140(1) of the said Act of 1988 shall be postponed till the main petition under section 166 of the Act is heard by the Tribunal. The entire approach and the reasoning of the learned Member of the Tribunal is contrary to the express provision of sub-section (3) and sub-section (4) of section 140 of the said Act of 1988. It is surprising that the Respondent No.2 which is a Government of India Undertaking has chosen to take such a stand before the Tribunal thereby completely defeating the right of the Petitioner to apply for compensation under section 140 of the said Act of 1988. In my view, the order impugned is wholly unsustainable and deserves to be quashed and set aside in this petition under Article 227 of the Constitution of India.

5. Hence I pass the following order:

(i) The impugned order dated 5th July 2004 is quashed and set aside and application Exh.15 made by the Respondent No.2 stands rejected.

(ii) The learned Member of the Tribunal will proceed to decide the Application under section 140(1) of the said Act of 1988 on merits as expeditiously as possible and in any event within a period of two months from today.

(iii) It is made clear that all contentions of the parties on merits of the said Application are kept open.

(iv) Rule is made absolute in the above terms with no order as to costs.

(v) Parties and the concerned Court to act on the authenticated copy of this order.

Judge.